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Disclosing Intelligence Agents

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WASHINGTON, Feb. 5 — The December issue of Covert Action Information Bulletin, the latest of the irregularly published magazine, contained a listing in boldface type of what was said to be the names of eight senior officers of the Central Intelligence Agency serving with fictitious diplomatic titles in eight foreign countries.

Some members of Congress, American intelligence officials and others find such publishing conduct both malicious and incredible.

Perhaps as incredible, however, is that most of the several thousand names of alleged intelligence agents printed in several books and in at least two magazines in recent years were not disclosed by turncoat spies or purloined from secret files. They were apparently deduced by perusing readily available sources, such as old copies of the State Department's Biographic Registrar, which was a public document until five years ago. In it, intelligence agency officers were given "covers" or false job titles that proved to be smaller than fig leaves.

Last year the intelligence committees of the Senate and House approved different versions of bills that would make it a crime to disclose names of agents.

The bills died in a last-minute crush of other business in Congress, in part because Democratic liberals who were then in the majority on the Senate Judiciary Committee had proposed a much narrower substitute.

The bills are scheduled for reconsideration in Congress this year, and they will probably provoke a reprise of a complex debate that has constitutional implications.

The Background

The Central Intelligence Agency has always posted "case officers," who recruit and supervise informers and agents, and some other employees abroad with what has been called "shallow" diplomatic cover in embassies and other government offices representing the United States. Other agents have been posted with deep cover, often as businessmen, with no apparent relationship to the United States Government and with no diplomatic immunity from arrest.

The staff of Covert Action Information Bulletin, based in Washington, asserted that it had never disclosed the name of an agent with deep cover. But since its founding in 1978 the magazine has printed hundreds of names of alleged case officers with shallow cover in a section called "Naming Names." The Bulletin's editors, William Schaap, Ellen Ray and Louis Wolf, are not former intelligence agents, but they

cret agents in covert attempts to influence the politics of other nations.

The Bulletin lists as one of its advisers Philip Agee, a former intelligence agency official who has helped to write books disclosing many other names, and who now lives in exile in West Germany.

An American intelligence officer was killed in Athens in late 1975 after an Athens newspaper said that he was the new C.I.A. station chief. Last July the home of an American official in Jamaica was sprayed with submachine gun bullets after an employee of the Bulletin asserted at a press conference that the official was actually an intelligence agent. No one was hurt in the incident.

The Jamaica incident greatly increased political momentum for the bills, which seemed to be languishing.

Last year's versions of both the Senate and House bills contained relatively uncontroversial provisions that would make it a crime for present or former Government officials who have had access to secret information to identify an undercover intelligence agent.

The bills provided penalties of five to 10 years in jail and fines of \$25,000 to \$50,000 for violations. An extraterritorial clause was included in an attempt to obtain the prosecution of Mr. Agee.

An attempt by the bills' sponsors to extend scaled-down penalties to cover private citizens who never have had access to classified information has been met with controversy, however.

The House bill was worded to cover anyone who published names "in the course of an effort to identify and expose covert agents with the intent to impair or impede the foreign intelligence activities of the United States."

Some officials of the Justice Department and other experts have warned that such an "intent" clause would make prosecution difficult and would be more likely to be voided on constitutional grounds than the Senate Intelligence Committee's version.

The Senate version was aimed at punishing anyone who had a shown a pattern of activities intended to identify and expose covert agents, and was based on the belief that such activities would impair or impede intelligence activities.

For the Legislation

Some proponents have acknowledged that their major reason for supporting such legislation was based on an angry and emotional wish to punish Mr. Agee and the editors of the Covert Action Information Bulletin for publishing agents' names. In fact, they have said that such an intention supported their denial that the law would inhibit or punish what they call "mainstream" jour-

nalists' publication of agents' identities damaged the "professional effectiveness" of intelligence officers abroad, embarrassed friendly foreign officials cooperating with such agents and stirred political resentment. High intelligence officials have said it was irrelevant that foreign intelligence agencies already knew who most American secret agents were.

Against the Legislation

Perhaps the major argument against legislation to punish those who disclose the names of intelligence agents is the contention that an attempt to punish publications that use nonclassified data would be an infringement of the First Amendment rights of free speech and free press. More than 60 law professors have taken this view, one of them calling the proposed law "the clearest violation of the First Amendment attempted by Congress in this era."

In testimony last year Floyd Abrams, a leading First Amendment lawyer, said that while he personally favored protecting agents' identities, "In legal jargon it doesn't 'write.' There is no way to phrase the ban sought without violating the First Amendment."

Spokesmen for news organizations have argued that the law would inevitably "chill" or inhibit legitimate reporting about intelligence matters and abuses.

John Stockwell, a former C.I.A. agent who is now a bitter critic of the agency, has asserted that the agency "itself is flagrantly careless" about cover and security and that case officers could not really operate abroad without often disclosing their real mission. Many intelligence officers privately agree.

The Outlook

In light of the hawkish sentiment in Congress aroused by the Soviet invasion of Afghanistan in late 1979 and the more conservative tone of Washington since the national elections, it seems quite likely that the legislation will pass this year.

Though not widely reported, the editors of Covert Action Information Bulletin have said that they would obey any new law and drop their "Naming Names" feature. If so, the first target for prosecution might turn out to be a more conventional journalist writing critically about the intelligence agency.

Spokesmen for such strong opponents of the bill as the American Civil Liberties Union have said that, if enacted, the legislation would certainly be